

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1048 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH and  
MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

TALABHAI VERSIBHAI

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Appearance:

MR KP RAVAL, Ld. APP for Petitioner  
MRS SHILPA J UNWALLA for Respondent No. 1  
MR AM DAGLI Ld. Advocate amicus curie

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CORAM : MR.JUSTICE M.S.PARIKH and  
MR.JUSTICE H.R.SHELAT

Date of decision: 03/11/1999

ORAL JUDGEMENT

1. This acquittal appeal arises from the judgment and order dated 31/3/1993 rendered by the Ld. Addl. Sessions Judge, Rajkot in Sessions Case No. 83 of 1992, wherein the respondent (hereinafter referred to as 'the accused') Tulabhai Versibhai (Talabhai Versibhai) came to

be charged with the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") for having been found in possession of 800 grams of green leaves of Bhang at around 12.15 p.m. (afternoon hours) of 31/5/1992 near Ranchhod Bapu Ashram, Kuvadava Road, City of Rajkot. The accused pleaded not guilty to the charge exh. 1 and at the conclusion of trial he asserted that a false case was filed against him. Upon appreciation of evidence the Ld. Addl. Sessions Judge came to the conclusion that the prosecution has not established the guilt of the accused beyond reasonable doubt inasmuch as the evidence of Panch witness Rasikbhai could not be said to be the evidence of an independent witness. The Ld. Addl. Sessions Judge has also referred to section 54 of the NDPS Act and finding that there was no seal of police station officer and also finding that such a seal was required under the said provision of the NDPS Act, held that non-compliance of the said provision would be fatal to the prosecution case. He finally observed that report exh. 21 sent by the P.S.I. Mr. Jadeja to the superior officer was not proved to have been either sent at all or promptly sent as required u/S. 57 of the NDPS Act. In the ultimate analysis the Ld. Addl. Sessions Judge has banked upon the panch witness Rasikbhai being not an independent witness as he appeared as a Panch witness on as many as 30 occasions for rendering the acquittal in question. The State has subjected this acquittal judgment and order of the Ld. Addl. Sessions Judge to challenge in this acquittal appeal in which at the initial stage leave was granted and the respondent accused was directed to be released on his furnishing surety in the sum of Rs.5,000/-. The accused remained in jail as he could not furnish the surety and, therefore, by virtue of our order dated 18/10/1999 this appeal was placed for final disposal.

2. At the outset Mr. K.P. Raval, Ld. A.P.P. submitted before this Court that even if this acquittal appeal succeeds, the accused would be liable for punishment u/S. 20(b) (i) of the NDPS Act and the maximum punishment prescribed thereunder is imprisonment for a term which may extend to five years. Mr. Raval fairly submitted that the accused had already undergone that much sentence in view of the fact that he could not furnish bail/surety in the sum of Rs.5,000/- as directed by this Court. He, therefore, submitted that appeal needed immediate hearing.

3. Accordingly, we have heard the Ld. A.P.P. for the appellant State and the learned advocate appearing for

the accused. We have also heard Mr. A.M. Dagli, learned advocate, amicus curie.

4. Mr. Raval, Ld. A.P.P. read before us the impugned judgment and order of the Ld. Addl. Sessions Judge, charge, oral evidence of the witnesses and the documentary evidence in the form of Panchnama as well as report from the Forensic Science Laboratory. We need not detain ourselves in appreciation of the evidence of the witnesses as well as the Panchnama that have been placed on record. Although we are not impressed with the reasonings given by the Ld. Addl. Sessions Judge, we feel that the acquittal of the accused deserves to be confirmed on account of following reasons :

5. It might be noted that the charge exh. 1 clearly indicates that the accused was found in possession of green leaves of Bhang (hemp) weighing 800 grams of the value of Rs.400/-. At this very stage we might refer to the report of Senior Scientific Assistant and Assistant Chemical Analyser to the Government of Gujarat, Regional Forensic Science Laboratory appearing at exh. 23. The report indicates following opinion :-

"The material of the case is identified as Ganja."

Since we are not going into the appreciation of evidence, it would become necessary to reconcile this finding of the analysis with the charge. Such reconciliation would give the result as green leaves of Ganja (hemp). We, therefore, revert to the definition of hemp as appearing in section 2 (iii) of the NDPS Act. It would read :

"(iii) "cannabis (hemp) means-

(a) charas, xxx xxx xxx xxx

(b) ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated, and

(c) any mixture, xxx xxx xxx xxx"

It might be noted from the aforesaid definition that clause (b) excludes leaves of Ganja from the offending substance cannabis (hemp). It would, therefore, clearly appear that the accused could not have been charged with the offence and if charged could not be said to have committed the offence punishable u/S. 20 of the NDPS Act, on the aforesaid reconciliation of the charge and the report of the expert from Forensic Science Laboratory. The prosecution could not be said to have established

that the offending substance was Bhang leaves. At the same time it could not be said that the accused was in possession of Ganja as contemplated by the aforesaid definition. We are supported in our view by Rajasthan High Court in Sevaram v/s. State of Rajasthan reported in 1993 (1) Crimes 253, where it has been observed that according to section 2 (iii) of the NDPS Act the alleged Bhang and dry leaves recovered from the appellant will have to be treated as excluded from the purview of the NDPS Act. Even if it was a case of Bhang leaves a learned Single Judge of this Court in the case of Mansing @ Mandas Velubhai v/s. State of Gujarat reported in 1993 (1) G.L.H. (U.J.) 29 has observed that possession of Bhang could not be said to be within the purview of the penal provisions of the NDPS Act.

6. In the above view of the matter and for the reasons stated by us and not for the reasons stated by the Ld. Addl. Sessions Judge this acquittal appeal deserves to be dismissed. Order accordingly. The accused shall stand relieved from the bailable warrant which could not be executed on account of the accused not having been able to furnish surety. He shall be set at liberty forthwith, if no longer required in any other case. Office shall send Yadi of this order immediately without any delay.

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PVR.